roll up his sleeves and start. He sometimes appears to name the difficulties but not to wrestle with them. And so in the end we are not given much light on the questions that remain: the possibilities of the tyranny of judges and of experts and of the ultimate loss of freedom when too many affirmative steps are taken through government to protect freedom.

But there can be no disagreement that the loss to law in the plane crash over Ireland in 1946 was a very real one indeed.

Harry Kalven, Jr.*


Mr. Seltzer's volume makes an important addition to tax literature. Its topic is a central one concerning which there has been much controversy since the First World War. The treatment of the subject is factual, objective and complete. The arrangement is good, and the style is adequately suited to the presentation of the author's careful analysis. If a lawyer may be permitted to express such an opinion about economic research, the scholarship of the study was painstaking and sound. Well over two hundred pages are devoted to appendices presenting tables with relevant data largely derived from tax returns and the varying treatment of capital gains and losses between 1917 and 1946.

Notwithstanding the excellence of the book, it is somehow unsatisfying. Perhaps it should not surprise us that an able and exhaustive statement of the known facts with respect to capital gains and losses does little more than emphasize the difficulty of achieving a satisfactory solution. We are reminded of the dual nature of such gains and losses and their close relationship to so-called ordinary income and losses. But we are also given new awareness of the undesirability and unfairness of not differentiating in tax treatment between some kinds of capital gains and some kinds of ordinary income. We also gather a negative bit of information—the proper tax treatment does not emerge from a careful study of the five or six variations our country has tried in dealing with the matter and of the systems of several foreign countries.

Mr. Seltzer does not seek a conclusion, though he devotes his final chapter to competing proposals for a solution of the problem. It is unfair to judge the book in relation to a goal which the author did not set for himself. Yet it must have been as disappointing to the author as it is to us that the analysis does not point more compellingly in the direction of a particular equitable and desirable solution. The necessity for adequate averaging is indicated—or if not adequate, at least far more complete than the few existing steps in that direction. Yet the author tends to dismiss the averaging that seems to appeal to him most—Vickrey's cumulative averaging—"as unlikely to command legislative atten-

* Associate Professor of Law, University of Chicago Law School.
tion in the near future.” In spite of this allegedly practical comment, one wishes the author had devoted more attention to the extent of the remaining capital gains and losses problem if it were assumed that averaging were in effect. There can be little doubt that any fairly good system of averaging would have important advantages in addition to the direct improvement of equity. It could lead to marked simplification in several parts of the tax law—notably the capital gains field—and perhaps would even be an over-all simplification despite the complexity of the averaging system itself. It would permit changes that would remove some of the pressure for avoidance devices designed to transform gains into the favored category of tax treatment. But as the author indicates without fully exploring, it would still leave a serious problem of realization and possible deterring of transactions in which gain is recognized. This problem exists partly by reason of the high marginal rates that some taxpayers would have even after averaging, and partly by reason of lack of income tax on appreciation in value of property existing at death. Granting that any solution of these problems would probably not be perfect, the area affected by them might be substantially narrowed if averaging were in effect. For example, upon such an assumption, it would probably prove fair to require a very long holding period—say ten years—for assets given a preferential capital gains treatment.

The interests of lawyers and economists are sufficiently different that the former might have put different emphasis on some parts of the subject of the book. Are there any meaningful statistics on the amount of controversy and litigation that has been caused by the differential treatment of capital gains and losses? How has the Code and the tax system as a whole been affected by this differentiation? For example, the problem of gain upon liquidation of a corporation is not confined to the problem of collapsible corporations.

Mr. Seltzer’s book provides basic data necessary to an understanding of the capital gains problem. It is an important tool which will assist any working on possible solutions. It is, perhaps, ungrateful not to accept the material thus offered without asking for something more and different—solutions for our very real difficulties.

ROBERT W. WALES


This work is primarily a textbook for courses in collective bargaining, or for supplementary use in broader courses in labor. It will also be useful to businessmen, union leaders, lawyers, and others interested in collective bargaining. Its chief value lies in its thorough and systematic coverage of collective bargaining practices, enlivened by the frequent use of quotations from such sources as court decisions, union publications, and the minutes of collective bargaining conferences.

When Professor Chamberlain moves from the descriptive to the theoretical